United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: May 31, 2007

TO : Richard L. Ahearn, Regional Director
Region 19

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: IUOE, Local 302
(Cascade Tower & Rigging, et al.) 560-2575-6742
Case 19-CC-2023 590-7587
650-8844

The Region submitted this case for advice as to whether the Union's disclaimers of Section 8(f) collective-bargaining relationships with three Employers, and its stated intention to refuse to execute future collective-bargaining agreements with them, violated Section 8(b)(4)(ii)(B).

We conclude that the Union's disclaimers and refusals to execute future agreements are unlawful under Limbach[1] because the Union was not motivated solely because of any primary dispute with the three employers. The Union's coercive conduct was motivated, at least in part, because the Employers provide crane operators to non-Union general contractors, impeding the Union's efforts to organize them.

FACTS

Cascade Tower & Rigging, Inc., Kimaco LLC, and Garner Construction WBE ("the Charging Parties") are crane services subcontractors operating in the construction industry in Washington State. They provide crane operators and crane-related services (such as rigging, lubricants, radios, and liability insurance) to general contractors on high-rise building projects. Most, if not all, of these general contractors operate non-union.

Operating Engineers, Local 302 ("the Union") represents, among other bargaining units, construction industry employees in Washington and Alaska. The Union claims that it has labor agreements with approximately 25%

[1] Sheet Metal Workers Local 80 (Limbach Co.), 305 NLRB 312 (1991).

of the general contractors involved in high rise building construction within the Union's jurisdiction, including most of the larger contractors.

The Charging Parties are signatory to the same 8(f) agreement with the Union ("compliance agreement"), patterned after the Union's contract with the Associated General Contractors of Washington ("the AGC"). Under the compliance agreement, the Charging Parties obtain all of their crane operators and other unit employees from the Union's hiring hall. Historically, crane operators referred to the Charging Parties have remained with them for the construction season, moving from job to job rather than returning to the hiring hall for dispatch when a project ends.

The Union's contract with the AGC and the related compliance agreement with the Charging Parties both contain "evergreen" clauses which would have automatically renewed the contracts on June 1, 2007, unless the Union or a signatory employer gave timely notice to reopen or cancel the agreement. In early March, the Union sent notices to the AGC and other contractors requesting that the employers reopen the AGC agreement. About that time, the Union also sent notices to more than 115 contractors, including the Charging Parties, terminating their compliance agreements upon expiration, May 31, 2007.

The Union stated that it terminated its compliance agreements with the three Charging Parties to put a stop to what the Union described as "brokering" by them, i.e., providing Union-supplied crane operators to non-Union general contractors. The compliance agreements permitted this practice, which the Union claims hampered its ability to provide crane operators to its larger signatory contractors. The Union also claims that the Charging Parties "brokering" of crane operators undercuts the Union's broader objective of organizing the non-Union general contractors. The Union was having difficulty convincing non-Union general contractors who needed crane operators to sign collective-bargaining agreements with the Union to obtain crane operators (and other Union-represented heavy equipment operators) from the Union's hiring hall, when the general contractors could obtain crane operators only from the Charging Parties.

To prevent, or at least control, the effects of the Charging Parties' alleged "brokering," the Union decided to no longer provide the Charging Parties with full compliance agreements. Instead, the Union would decide whether to execute agreements on a project-by-project basis after the Charging Parties provided information regarding the general

contractor and the project. The Union has not articulated all the criteria it will use to determine whether to execute a particular project agreement. The Union has stated that it will not execute any project agreement for a contractor with whom the Union has a labor dispute, or whose employees the Union is attempting to organize.

The Charging Parties claim that the Union's disclaimer, termination of the compliance agreements, and refusal to negotiate any successor agreement will effectively put each of them out of business. The Charging Parties also note that without compliance agreements, they will no longer have access to qualified crane operators to work on current projects, exposing them to serious financial liability. The Union asserts that it will probably execute extensions of the current compliance agreements to allow the Charging Parties to continue current projects. The Union, however, has not reached agreement with the AGC for a successor agreement, and has so far refused to meet with any of the Charging Parties to negotiate any project agreement.

ACTION

We conclude that the Union's disclaimers and refusals to execute future compliance agreements are coercive and unlawfully secondary under Limbach because they are motivated by the Union's attempts to prevent the Charging Parties from doing business with non-Union general contractors, and to support the Union's efforts to organize those contractors.

Absent an unlawful objective, a union may lawfully disclaim interest in representing a group of employees and terminate a collective-bargaining relationship.[2] In an 8(f) context, a union may repudiate a collective-bargaining relationship upon expiration of the contract without violating 8(b)(3).[3] A union violates 8(b)(4)(ii)(B),

[2] See, e.g., Electrical Workers IBEW Local 58 (Steinmetz Electrical), 234 NLRB 633, 634-635 (1978) ("This Board cannot compel a union to represent employees it no longer desires to represent, and a refusal to bargain over such employees does not violate Section 8(b)(3) of the Act."); Corrugated Asbestos Contractors v. NLRB, 458 F.2d 683, 687 (5th Cir. 1972) ("We cannot force a union to continue, against its wishes, a relationship that is in its very nature predicated upon voluntariness and consent.")

[3] John Deklewa & Sons, 282 NLRB 1375, 1386 (1987), enfd. sub nom. Iron Workers Local 3 v. NLRB, 843 F.2d 770 (3rd Cir. 1988), cert. denied 488 U.S. 889 (1988).

however, if it repudiates an 8(f) relationship for an unlawful secondary purpose.[4]

In Limbach, post-contract expiration, the union disclaimed interest in representing unit employees and refused to execute successor 8(f) agreements with the neutral employer, effectively putting it out of business in that market. The Board found the union's conduct was coercive.[5] The union's coercion of the employer was motivated, at least in part, by the union's desire to enmesh the employer in the union's long-running effort to organize the primary employer.[6] The Board thus found the union's coercive disclaimer was secondary and unlawful.

As in Limbach, the Union's termination of its collective-bargaining relationships with the Charging Parties also violated Section 8(b)(4)(ii)(B) because they are motivated, at least in part, by the Union's dispute with non-Union contractors. The Union's stated bases for terminating its relationships are 1) to prevent the Charging Parties from using its access to Union crane operators to secure subcontracts on non-Union projects, and 2) prevent the Charging Parties from undermining the Union's efforts to organize non-Union employers. Clearly, the Union's coercive disclaimers and refusals to bargain violate Section 8(b)(4)(ii)(B) because they are "tactically calculated to satisfy [the Union's] objectives elsewhere," preventing the Charging Parties from doing business with employers disfavored or targeted by the Union.[7]

[*FOIA Exemptions 2 and 5*

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[4] Limbach, above, 305 NLRB at 315.

[5] 305 NLRB at 315.

[6] Ibid.

[7] Ibid. See also, Service Employees Local 525(Trinity Maintenance), 329 NLRB 638, 640 (1999) (union violated 8(b)(4)(ii)(B) by coercing neutral employer as part of the union's effort to organize the primary).

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